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August 2, 2004

Hon. Pat Miller, Chairman  
c/o Sharla Dillon, Docket & Records Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

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Re: *Petition of DIECA Communications, Inc , d/b/a Covad Communications Company, for Arbitration of Interconnection Agreement Amendment with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*  
Docket No. 04-00186

Dear Chairman Miller:

Enclosed please find the original and fourteen (14) copies of DIECA Communications, Inc 's. d/b/a Covad Communications Company, Response to BellSouth's Motion for Summary Disposition and Expedited Relief, Response to Motion to Convert and Response to Petition to Arbitrate.

Please note that Exhibits 1-8 are being filed as Confidential

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By

Henry Walker

HW/krq

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**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**August 2, 2004**

*IN RE* Petition of DIECA Communications, ) Docket No 04-00186  
Inc., d/b/a Covad Communications )  
Company, for Arbitration of Interconnection )  
Agreement Amendment with BellSouth )  
Telecommunications, Inc Pursuant to )  
Section 252(b) of the Telecommunications )  
Act of 1996 )

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**DIECA COMMUNICATIONS, INC.'S, D/B/A COVAD COMMUNICATIONS  
COMPANY, RESPONSE TO BELL SOUTH'S MOTION FOR SUMMARY  
DISPOSITION AND EXPEDITED RELIEF, RESPONSE TO MOTION TO  
CONVERT AND RESPONSE TO PETITION TO ARBITRATE**

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DIECA Communications, Inc., d/b/a Covad Communications Company ("Covad"), files this Response to BellSouth Telecommunications, Inc.'s ("BellSouth") Motion for Summary Disposition and Expedited Relief, Response to Motion to Convert and Response to Petition to Arbitrate

**Statement of Facts**

1. On December 4, 2003, BellSouth electronically forwarded to Covad a proposed set of amendments related to the *Triennial Review Order* ("TRO"), as well as amendments related to "additional service enhancements". BellSouth's proposed amendments entirely re-wrote Attachments 2 and 6 to the interconnection agreement ("IA"), including portions previously arbitrated by the parties and unrelated to the TRO. A copy of BellSouth's December 4, 2003 letter is attached hereto as Exhibit 1

2. Four days later, on December 8, 2003, Covad responded by electronic mail, requesting a red-line of the existing IA and a set of amendments, which included only those amendments necessitated by changes in law, rather than a wholesale re-write of previously arbitrated sections unrelated to the *TRO*. A copy of Covad's December 8, 2003 letter is attached hereto as Exhibit 2.

3. One month later, on February 9, 2004, BellSouth responded to Covad's request with an electronic letter admitting that "BellSouth has provided a complete re-write of the UNE attachment for the Interconnection Agreement", and attaching a red-line of BellSouth's standard version of an Interconnection Agreement (not the parties' interconnection agreement), including "additional service enhancements". Although BellSouth's red-line did not "clearly designate the changes necessary to reflect the *TRO*"<sup>1</sup>, Covad responded the next day with a thank you and a promise to get a red-line back shortly. A copy of BellSouth's February 9, 2004 letter is attached hereto as Exhibit 3.

4. In the interceding month, while Covad was in the process of attempting to compare the red-line of BellSouth's standard offering with the parties' actual interconnection agreement, parse through the unidentified legal basis for the differences, if any; determine which were "additional service enhancements", which were *TRO*-related changes and which were simply difference between the agreements, the *USTA II* decision was published.

5. On March 4, 2004, Covad emailed BellSouth with a question regarding how BellSouth wanted to proceed in their negotiations given the changes to the *TRO*

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<sup>1</sup> See BellSouth's Response, filed July 19, 2004, at 2-3

order caused by the *USTA II* decision and offered to attempt to red-line the red-line of BellSouth's amendment, let BellSouth edit its amendments, or simply stop for a period of time. That same day, BellSouth responded that it was evaluating the *USTA II* opinion and would "be back in touch with you" as soon as BellSouth determined how to proceed. A copy of the parties' March 4 email exchange is attached hereto as Exhibit 4.

6. Having waited over a month with no apparent movement from BellSouth, Covad wrote its BellSouth contract negotiator on April 16, 2004 to provide BellSouth with Covad's position on the line sharing portion of BellSouth's proposed *TRO* amendments. Covad's April 16, 2004 letter is the "April 16" event to which Mr. Weber's North Carolina testimony refers.<sup>2</sup> Contrary to BellSouth's representation that Covad rejected BellSouth's *TRO* amendments *in toto*, Covad's April 16, 2004 letter only "rejected" BellSouth's proposed amendments regarding line sharing and *did* offer a counter-proposal. Indeed, the April 16 letter closed with "[p]lease let us know when BellSouth decides what to do with the remainder of its proposed *TRO* IA amendment." A copy of Covad's April 16, 2004 letter is attached hereto as Exhibit 5.

7. On April 20, 2004, BellSouth responded electronically that it had reviewed Covad's April 16 proposal and would "be back in touch with our next steps." A copy of BellSouth's April 20 email is attached as Exhibit 6.

8. Still without any response on its intent to proceed with its *TRO* amendments, and without further response to its April 16, 2004 letter, Covad wrote BellSouth on June 9, 2004 stating its intent to file for arbitration of the line sharing issue

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<sup>2</sup> Direct Testimony of William H. Weber, NCUC Docket No. P-55, Sub 1522, p. 3, ll. 4-6 ("On April 16, 2004 Covad rejected BellSouth's proposed amendments and offered a counter-proposal.")

“given the possibility that we will not be able to place new Line Sharing orders after October 1, 2004.” A copy of Covad’s June 9, 2004 letter is attached hereto as Exhibit 7

9. On June 22, 2004, BellSouth provided its position for the arbitration petition. A copy of BellSouth’s June 22, 2004 letter is attached as Exhibit 8

10 On June 23, 2004, Covad filed a petition for arbitration with BellSouth Telecommunications, Inc. regarding line sharing In that petition, Covad requested that the Authority find that BellSouth is required to provide line sharing pursuant to § 271 and that line sharing must be offered at just and reasonable rates.

11. On July 19, 2004, BellSouth filed what it denominated as a “response” to Covad’s petition While BellSouth called its pleading a “response,” it actually contained a motion to convert this proceeding into a different type of proceeding than that which Covad requested and to arbitrate (or include in the newly styled proceeding) a number of issues which the parties have not yet negotiated. It is Covad’s position that BellSouth’s “response” is actually a motion and an arbitration request.

12 On July 26, 2004, BellSouth filed a motion for summary disposition and expedited relief By summary disposition, Covad understands BellSouth’s position to be that this proceeding can be determined via briefs and that an evidentiary hearing is not needed on either the line sharing issue or any of the other issues BellSouth raised in its response to Covad’s petition

#### **Response to Motion to Expedite**

13. As a preliminary matter, Covad agrees with BellSouth that however this proceeding is processed, the dispute related to line sharing should be handled on an expedited basis.

14. BellSouth's request that this docket be processed without an evidentiary hearing implies that there are no facts in dispute. If the parties can come to an agreement that that is indeed the case, Covad may be willing to agree to the process BellSouth proposes.

15. Covad, however, is somewhat puzzled by the implication that no facts are in dispute. Because it cited to Mr. Weber's testimony in its Response, BellSouth is presumably aware of the testimony filed by Covad witness, William H. Weber, in a similar proceeding before the North Carolina Utilities Commission on June 24, 2004.<sup>3</sup> In that testimony, Covad raised as Issue 3 "What are just and reasonable rates for line sharing after October 2004?" Presumably, whether a rate is "just and reasonable" is a fact-specific inquiry.

16. BellSouth's request for the Authority to dispose of this proceeding through briefing means one of two things. Either BellSouth assumes it will prevail as to its position that it has no § 271 obligation to continue to provide line sharing, and thus no rate need be set, or BellSouth agrees that if it does have a § 271 obligation to continue to provide line sharing, the rate which Covad has proposed is a just and reasonable rate. In either circumstance, Covad is willing to proceed under BellSouth's proposed expedited procedures. However, if BellSouth intends on challenging the rates proposed by Covad, there are several facts, including the rates established in the Covad/Qwest commercial agreement and the basis for the variation between those rates and the rates proposed in this proceeding, that Covad will be obliged to establish via an evidentiary hearing.

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<sup>3</sup> Docket No. P-55, Sub 1522, BellSouth refers to this testimony (though it badly mischaracterizes it), in its response to Covad's petition at 3.

17. Further, BellSouth has entered into a commercial agreement with a Florida carrier (believed to be GRUCom), the relevant portions of the template copy of which are attached as Exhibit 9 (upon information and belief, the template has been circulated and offered to every CLEC in the BellSouth region), which recognizes BellSouth's obligation under § 271 to provide access to the high frequency portion of the loop, albeit as remote terminal line sharing. In order to agree to the process BellSouth has proposed, the parties must stipulate that this agreement, and the fact that it has been generally offered in the BellSouth region since December 2003, will become part of the record in this case. Alternatively, entering the template agreement and an admission that BellSouth has entered into such an agreement with a Florida carrier, and generally offered it in the BellSouth region since December 2003, would be sufficient.

18. Finally, as to most of the non-line sharing *TRO* issues BellSouth raised in its response to Covad's petition, Covad has little or no disagreement with BellSouth's positions. An Attachment B (matrix) reflecting Covad's current position and proposed amendments relating to the nine new issues raised by BellSouth is attached hereto as Exhibit 10. Having now received a post-*USTA II* matrix of BellSouth's proposed *TRO* amendments, Covad is negotiating with BellSouth to resolve those remaining open issues.

19. One remaining factual exception concerns Call Related Data Bases, Issue number 4 on Attachment B. In order to agree to process this issue without an evidentiary hearing, it would be necessary for BellSouth to stipulate that Covad does not own any switches of the type referred to in the *TRO* at paragraph 551 or 47 CFR

351 319(d)(4)(i)(B). Covad is willing to provide an affidavit to BellSouth to establish this fact in order to facilitate its desire to expedite the procedures in this case.

### **Response to Petition to Arbitrate**

20. An Attachment B (matrix) reflecting Covad's current position and proposed amendments relating to the nine new issues raised by BellSouth is attached hereto as Exhibit 10.

### **Response to Motion to Covert**

21 BellSouth does not dispute that "[a]t issue are those changes resulting from the August 21, 2003 Triennial Review Order", nor does BellSouth apparently dispute the fact that the parties exchanged proposed terms, conditions and rates for line sharing, albeit based on differing opinions regarding their legal basis. Importantly, BellSouth never refused to negotiate over access to and pricing of line sharing.

22. The FCC set out the procedure by which carriers were to implement the *TRO* at paragraphs 700-706, and refused the Bell operating companies' requests to trump both section 252 and individual interconnection agreements in the implementation of the *TRO* <sup>4</sup>

23 Rather, the FCC identified the individual interconnection agreement change of law provisions as governing the process for implementing the *TRO*, with section 252 serving as a guide, and in the absence of a change of law provision, as the default.<sup>5</sup>

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<sup>4</sup> *TRO* ¶ 701 ("[W]e decline the request of several BOCs that we override the section 252 process and unilaterally change all interconnection agreements")

<sup>5</sup> *TRO* ¶ 702-704, *see also* ¶ 701, fn 2087 (applying 252(a)(1) and 252(b)(1) "request to negotiate" language "in the interconnection *amendment* context" (emphasis added) )



24. In its discussion, the FCC repeatedly references both section 252 as well as submission of disputes to state arbitration.<sup>6</sup> Specifically, at paragraph 703, in describing the “default” procedure for carriers without change in law provisions, the FCC stated that, “where a negotiated agreement cannot be reached, parties would submit their requests for state arbitration ..”

25. Covad and BellSouth’s interconnection agreement does contain a change in law provision, which states

16 3 In the event that any effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Covad or BellSouth to perform any material terms of this Agreement, Covad or BellSouth may, on thirty (30) days’ written notice require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the Dispute shall be referred to the Dispute Resolution procedure set forth in this Agreement.

26. The “Dispute Resolution” provision of the Interconnection Agreement provides:

## **12. Resolution of Disputes**

Except as otherwise stated in this Agreement, the Parties agree that if any dispute arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, either Party may petition the Commission for a resolution of the dispute. Each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement

27 In this case, the interconnection agreement is silent as to the nature of the proceeding for which the Party is petitioning the Authority The provision only states

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<sup>6</sup> TRO ¶ 701, *infra*, ¶ 702 (“we decline to depart from the section 252 process”), ¶ 703 (“We will rely on state commissions to be vigilant in monitoring compliance with the provisions of section 251 and 252”)

that the petition is “for resolution of the dispute ” Thus, the interconnection agreement provides both parties flexibility regarding the procedure either party may seek for dispute resolution, whether it be a complaint, arbitration, declaratory ruling, request for injunctive relief (where available), contempt proceeding, request for generic docket or other proceeding

28. While the FCC appears to allow for individual contracts to depart from the requirements of section 252, including the timing of application for<sup>7</sup>, and resort to, arbitration, where the contract is silent on a particular subject, the FCC directs that the provisions of 252 should control as the “default”.<sup>8</sup>

29. The type of “petition” provided for in section 252 for resolution of interconnection agreement disputes is a petition to arbitrate<sup>9</sup>

30 Because the parties’ IA was silent on the vehicle for dispute resolution, and given the FCC’s direction, Covad styled its petition as a petition to arbitrate under the jurisdiction of section 252 and the parties’ Interconnection Agreement.

31. Covad’s petition was timely filed in accordance with the time line provided for dispute resolution in the parties’ interconnection agreement.<sup>10</sup>

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<sup>7</sup> TRO ¶ 704 (“we believe that the section 252 process described above provides good guidance even in instances where a change of law provision exists ”)

<sup>8</sup> TRO ¶ 703

<sup>9</sup> 47 U S C § 252(b)

<sup>10</sup> TRO ¶704 (In discussing dispute resolution under the terms of a change of law provision, the FCC states “Once a contract change is requested by either party, we expect that negotiations and *any timeframe* [provided in the change of law provision] for resolving the dispute would commence immediately ” (emphasis added))

**WHEREFORE,**

1. With respect to BellSouth's Motion to Expedite the proceedings, Covad states that it would agree to the process requested by BellSouth, provided that BellSouth will agree to the conditions set forth herein;

2. With respect to BellSouth's Response to Covad's Petition to Arbitrate, Covad respectfully requests that the Authority adopt Covad's positions and proposed amendments related to the nine (9) new issues raised by BellSouth and require the Parties to amend the Agreement accordingly;

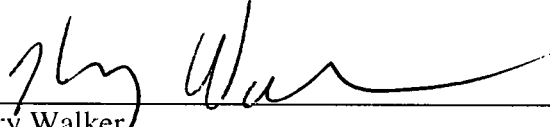
3 With respect to BellSouth's Motion to Convert, Covad respectfully requests that the Authority deny BellSouth's Motion and resolve all of the Parties' issues by way of an arbitration proceeding; and

4. Grant such other and additional relief to Covad that the Authority deems just and proper

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: \_\_\_\_\_

  
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Attorneys for Covad Communications

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Covad's Response to BellSouth's Motion for Summary Disposition and Expedited Relief has been furnished by electronic mail and U S Mail this 2<sup>nd</sup> day of August, 2004 to the following:

Guy Hicks  
BellSouth Telecommunications, Inc  
333 Commerce Street, Suite 2101  
Nashville, Tennessee 37201-3300

  
Henry Walker

## **EXHIBIT 9**

## AGREEMENT

### GENERAL TERMS AND CONDITIONS

**THIS (SERVICES) AGREEMENT** is made by and between BellSouth Telecommunications, Inc., (BellSouth), a Georgia corporation, and DIECA Communications, Inc. d/b/a Covad Communicatiaons Company (<<customer\_short\_name>>), a Virginia corporation, and shall be effective on the Effective Date, as defined herein. This Agreement may refer to either BellSouth or <<customer\_short\_name>> or both as a “Party” or “Parties.”

### WITNESSETH

**WHEREAS**, BellSouth is a local exchange telecommunications company authorized to provide Telecommunications Services in the states of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

**WHEREAS**, <<customer\_short\_name>> is a Competitive Local Exchange Carrier (“CLEC”) authorized to provide Telecommunications Services in the state(s) of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina and Tennessee; and

**WHEREAS**, BellSouth desires to provide and <<customer\_short\_name>> desires to purchase certain Services not required pursuant to Section 251 of the Telecommunications Act of 1996 (“Act”), but required pursuant to Section 271 of the Act; and

**WHEREAS**, BellSouth desires to provide and <<customer\_short\_name>> desires to purchase certain other Services not required pursuant to the Act;

**NOW, THEREFORE**, in consideration of the mutual agreements contained herein, BellSouth and <<customer\_short\_name>> agree as follows:

#### Definitions

**Affiliate** is defined as a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term “own” means to own an equity interest (or equivalent thereof) of more than 10 percent.

**Commission** is defined as the appropriate regulatory agency in each state of BellSouth’s nine-state region (Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee).

**Attachment 1  
Services**

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- 9 4 2 <<customer\_short\_name>> CNAM records provided for storage in the BellSouth CNAM SCP shall be available, on a SCP query basis only, to all Parties querying the BellSouth CNAM SCP. Further, CNAM service shall be provided by each Party consistent with state and/or federal regulation.
- 9 4 3 The mechanism to be used by <<customer\_short\_name>> for initial CNAM record load and/or updates shall be determined by mutual agreement. The initial load and all updates shall be provided by <<customer\_short\_name>> in the BellSouth specified format and shall contain records for every working telephone number that can originate phone calls. It is the responsibility of <<customer\_short\_name>> to provide accurate information to BellSouth on a current basis.
- 9 4 4 Updates to the CNAM database shall occur no less than once a week, reflect service order activity affecting either name or telephone number, and involve only record additions, deletions or changes.
- 9 4 5 <<customer\_short\_name>> shall submit to BellSouth a notice of its intent to access and utilize BellSouth's Wholesale CNAM Database Services. Said notice shall be in writing no less than sixty (60) days prior to <<customer\_short\_name>>'s requested date of access to BellSouth's Wholesale CNAM Database Services and shall be addressed to <<customer\_short\_name>>'s Local Contract Manager.
- 9 4.6 In order to formulate a CNAM query to be sent to the BellSouth CNAM SCP, <<customer\_short\_name>> shall provide its own CNAM Switching Service Point (SSP). <<customer\_short\_name>>'s CNAM SSPs must be compliant with TR-NWT-001188, "CLASS Calling Name Delivery Generic Requirements".

## **10. Remote Site Line Sharing**

### **10 1 General**

- 10 2 Remote Site Line Sharing is defined as the process by which <<customer\_short\_name>> provides digital subscriber line service over the same copper sub-loop that BellSouth uses to provide voice service, with BellSouth using the low frequency portion of the loop and <<customer\_short\_name>> using the high frequency spectrum (as defined below) of the sub-loop. The Unbundled Sub-Loop Distribution facility is a dedicated transmission facility that BellSouth provides from an End User's point of demarcation to a BellSouth cross-connect device. The BellSouth cross-connect device may be located within a remote terminal (RT) or a stand-alone cross-box in the field or in the equipment room of a building. The unbundled sub-loop distribution media is a copper twisted pair that can be provisioned as a 2-Wire facility.

- 10 3 The High Frequency Spectrum is defined as the frequency range above the voiceband on a copper sub-loop facility carrying analog circuit-switched voiceband transmissions. Access to the High Frequency Spectrum is intended to allow <<customer\_short\_name>> the ability to provide Digital Subscriber Line (xDSL) data services to the End User for whom BellSouth provides voice services. The High Frequency Spectrum shall be available for any version of xDSL complying with Spectrum Management Class 5 of ANSI T1.417, American National Standard for Telecommunications, Spectrum Management for Loop Transmission Systems. BellSouth will continue to have access to the low frequency portion of the sub-loop spectrum (from 300 Hertz to at least 3000 Hertz, and potentially up to 3400 Hertz, depending on equipment and facilities) for the purposes of providing voice service. <<customer\_short\_name>> shall only use xDSL technology that is within the PSD mask for Spectrum Management Class 5 as found in the above-mentioned document.
- 10 4 Access to the High Frequency Spectrum requires an unloaded, 2-wire (Non-Designed) copper sub-loop. An unloaded copper sub-loop has no load coils, low-pass filters, range extenders, DAMLs, or similar devices and minimal bridged taps consistent with ANSI T1 413 and T1 601.
- 10 5 Procedures for High Frequency Spectrum Remote site Unbundled Sub-Loop Modification are posted at <http://www.interconnection.bellsouth.com/html/unes.html>. BellSouth will not modify a sub-loop for access to the High Frequency Spectrum if modification of that sub-loop significantly degrades BellSouth's voice service. If <<customer\_short\_name>> requests modifications on a sub-loop longer than 18,000 feet and requested modifications significantly degrade the voice services on the Loop, <<customer\_short\_name>> shall pay for the sub-loop to be restored to its original state.
- 10 6 The High Frequency Spectrum shall only be available on sub-loops provided by BellSouth on which BellSouth continues to provide analog retail voice service directly to a BellSouth End User. In the event the BellSouth End User terminates its BellSouth provided retail voice service for any reason, or in the event BellSouth disconnects the End User's retail voice service pursuant to its tariffs or applicable law, and <<customer\_short\_name>> desires to continue providing xDSL service on such sub-loop, <<customer\_short\_name>> shall be required to purchase a full stand-alone sub-loop pursuant to the Parties' Interconnection Agreement. To the extent commercially reasonable, BellSouth shall give <<customer\_short\_name>> notice in a reasonable time prior to disconnection of the retail voice End User. Such notice shall give <<customer\_short\_name>> an adequate opportunity to notify BellSouth of its intent to purchase such sub-loop. In those cases where BellSouth no longer provides retail voice service to the End User and <<customer\_short\_name>> purchases the full stand-alone sub-loop, <<customer\_short\_name>> will pay the appropriate recurring and nonrecurring

rates for such sub-loop. In the event <<customer\_short\_name>> purchases a standalone voice grade sub-loop, <<customer\_short\_name>> acknowledges that such sub-loop may not remain xDSL compatible.

10.7 Only one competitive local exchange carrier shall be permitted access to the High Frequency Spectrum of any particular sub-loop.

10.8 Provisioning of High Frequency Spectrum and Splitter Space

10.8.1 BellSouth will provide <<customer\_short\_name>> with access to the High Frequency Spectrum as follows:

10.8.2 To order High Frequency Spectrum on a particular sub-loop, <<customer\_short\_name>> must have a Digital Subscriber Line Access Multiplexer (DSLAM) collocated at the remote site that serves the End User of such sub-loop.

10.8.3 <<customer\_short\_name>> may provide its own splitters or may order splitters in a remote site once the <<customer\_short\_name>> has installed its DSLAM at that remote site. <<customer\_short\_name>> may order BellSouth owned splitters at the rates set forth in Exhibit A.

10.8.4 Once a splitter is installed on behalf of <<customer\_short\_name>> in a remote site in which <<customer\_short\_name>> is located, <<customer\_short\_name>> shall be entitled to order the High Frequency Spectrum on lines served out of that remote site. BellSouth will bill and <<customer\_short\_name>> shall pay the applicable rate for <<customer\_short\_name>>'s High Frequency Spectrum End User's activation.

10.9 BellSouth Owned Splitter

10.9.1 At <<customer\_short\_name>> request BellSouth will select, purchase, install and maintain a splitter at the remote site. The <<customer\_short\_name>>'s meet point is at the BellSouth "cross connect" point located at the Feeder Distribution Interface (FDI). <<customer\_short\_name>> will provide a cable facility to the BellSouth FDI. BellSouth will splice the <<customer\_short\_name>>'s cable to BellSouth's spare binding post in the FDI and use "cross connects" to connect the <<customer\_short\_name>>'s cable facility to the BellSouth splitter. The splitter will route the high frequency portion of the circuit to the <<customer\_short\_name>>'s xDSL equipment in their collocation space. Access to the high frequency spectrum is not compatible with Foreign Exchange (FX) lines, ISDN, shall comply with ANSI T1 413 and other services listed in the technical section of this document.

10.9.2 The BellSouth splitter bifurcates the digital and voice band signals. The low frequency voice band portion of the circuit is routed back to the BellSouth switch.

The high frequency digital traffic portion of the circuit is routed to the xDSL equipment in the <<customer\_short\_name>>'s Remote Terminal (RT) collocation space and routed back to the <<customer\_short\_name>>'s network  
<<customer\_short\_name>> shall purchase ports on the splitter in increments of 24 ports

- 10.9.3 BellSouth will install the splitter in (i) a common area close to <<customer\_short\_name>>'s collocation area, if possible; or (ii) in a BellSouth relay rack as close to <<customer\_short\_name>>'s DS0 termination point as possible <<customer\_short\_name>> shall have access to the splitter for test purposes regardless of where the splitter is placed in the BellSouth premises For purposes of this section, a common area is defined as an area in the remote site in which both Parties have access to a common test access point BellSouth will cross-connect the splitter data ports to a specified <<customer\_short\_name>> DS0 at such time that a <<customer\_short\_name>> End User's service is established
- 10.10 CLEC Owned Splitter
- 10.10.1 <<customer\_short\_name>> may at its option purchase, install and maintain splitters in its collocation arrangements <<customer\_short\_name>> may use such splitters for access to its End Users and to provide digital line subscriber services to its End Users using the High Frequency Spectrum  
<<customer\_short\_name>> will be required to activate cable pairs in no less than eight (8) pair increments
- 10.10.2 Any splitters installed by <<customer\_short\_name>> in its collocation arrangement shall comply with ANSI T1 413, Annex E, or any future ANSI splitter Standards <<customer\_short\_name>> may install any splitters that BellSouth deploys or permits to be deployed for itself or any BellSouth affiliate.
- 10.11 **Ordering**
- 10.11.1 <<customer\_short\_name>> shall use BellSouth's Remote Splitter Ordering Document (RSOD) to order and activate splitters from BellSouth or to activate CLEC owned splitters at an RT for use with High Frequency Spectrum.
- 10.11.2 BellSouth will provide <<customer\_short\_name>> the Local Service Request (LSR) format to be used when ordering the High Frequency Spectrum.
- 10.11.3 BellSouth will provide <<customer\_short\_name>> access to Preordering Loop Makeup (LMU) in accordance with the terms of the Parties' Interconnection Agreement For billing and administrative ease, during the term of this Agreement, BellSouth will continue to offer LMU and Unbundled Loop Modification (ULM) for the Services described herein at the rates set forth in the Interconnection Agreement Upon renewal of this Agreement, BellSouth reserves

the right to charge market rates for LMU and ULM used in conjunction with the Services hereunder

- 10.11.4 BellSouth shall test the data portion of the sub-loop to ensure the continuity of the wiring for <<customer\_short\_name>>'s data.
- 10.12 Maintenance and Repair
- 10.12.1 <<customer\_short\_name>> shall have access for repair and maintenance purposes to any sub-loop for which it has access to the High Frequency Spectrum. If <<customer\_short\_name>> is using a BellSouth owned splitter, <<customer\_short\_name>> may access the sub-loop at the point where the data signal exits. If <<customer\_short\_name>> provides its own splitter, it may test from the collocation space or the termination point.
- 10.12.2 BellSouth will be responsible for repairing voice services and the physical line between the network interface device at the End User's premises and the termination point. <<customer\_short\_name>> will be responsible for repairing data services. Each Party will be responsible for maintaining its own equipment.
- 10.12.3 <<customer\_short\_name>> shall inform its End Users to direct problems with the High Frequency portion of the sub-loop to <<customer\_short\_name>>, unless both voice and data services are impaired, in which event the End Users should call BellSouth.
- 10.12.4 Once a Party has isolated a trouble to the other Party's portion of the sub-loop, the Party isolating the trouble shall notify the End User that the trouble is on the other Party's portion of the sub-loop.
- 10.12.5 Notwithstanding anything else to the contrary in this Agreement, when BellSouth receives a voice trouble and isolates the trouble to the physical collocation arrangement leased by <<customer\_short\_name>>, BellSouth will notify <<customer\_short\_name>>. <<customer\_short\_name>> will provide at least one but no more than two (2) verbal connecting facility assignments (CFA) pair changes to BellSouth in an attempt to resolve the voice trouble. In the event a CFA pair change resolves the voice trouble, <<customer\_short\_name>> will provide BellSouth submit an LSR providing the new CFA pair information within twenty four (24) hours of the verbal notification. If the owner of the physical collocation arrangement fails to resolve the trouble by providing BellSouth with the verbal CFA pair changes, BellSouth may discontinue <<customer\_short\_name>>'s access to the High Frequency Spectrum on such sub-loop. BellSouth will not be responsible for any loss of data as a result of this action and BellSouth shall not have any liability for disconnection of <<customer\_short\_name>>'s access to the high frequency portion of the sub-loop.

**11. Operational Support Systems (OSS)**

# **EXHIBIT 10**

## EXHIBIT B

Issue Number	Positions of the Parties	BellSouth's Proposed Amendments	Covad's Proposed Amendments
1 Line Sharing	<p><b>Covad:</b> Because BellSouth is obliged to provide access to line sharing under 47 U.S.C. § 271, Covad proposes the same access requirements set forth in the Parties' current IA, with modifications to the pricing consistent with the FCC's TRO guidance. BellSouth's proposed TRO amendment improperly relies on the transitional pricing set forth by the FCC under its 201 and 202 authority and fails to address line sharing ordering after October 2004. However, the just and reasonable standard under 201 and 202, and not the FCC's transitional pricing, applies to the access requirements for line sharing under Section 271. Because BellSouth is obliged to offer line sharing under Section 271, the proper 201 and 202 pricing is the just and reasonable rate, not the transitional rate identified by the FCC. In most instances, the just and reasonable rate will be lower than the rates proposed by BellSouth in its</p>	<p>Attachment 2, Section 2.11.1 Insert a reference to revised line sharing rates before Exhibit C and include the rate revisions specified in the TRO and applicable federal rules.</p> <p>Attachment 2, Section 2.11.4 Delete subsection 2.11.4.1 and replace with new subsections 2.11.4.1 – 2.11.4.3</p> <p>Attachment 2, Section 2.11.4 Delete the sentence from the subsections formerly numbered as 2.11.4.2 referring to the interim rates in Exhibit C and renumber subsection to conform with inserted language.</p>	<p>1 Attachment 2, Section 1.1 add.  This Attachment also sets forth the High Frequency Portion of the Loop (HFPL) that BellSouth agrees to offer to Covad on an unbundled basis in accordance with its obligations under Section 271 of the Act beginning October 3, 2004.</p> <p>2 Attachment 2, Section 1.2 add  The provision of the HFPL, as a Network Element, under Section 271 of the Act is addressed in section 2.11 et seq. of this Agreement.</p> <p>Exhibit C should be modified to reflect the new rates filed with Covad's Petition to Arbitrate. However, the</p>

	<p>December 4, 2003 IA amendment Because the access requirements have not changed, Covad is not proposing any change to the existing IA regarding access to line sharing apart from the introduction language in Attachment 2</p> <p><b>BellSouth:</b> Covad's petition results directly from the FCC's Triennial Review Order ("TRO") and resulting rules. As a result the petition constitutes a dispute arising under the change of law provisions in the Parties' Agreement rather than an arbitration petition within the meaning of 47 U.S.C. § 252. The applicable federal rules outline the method of providing access to line sharing at 47 C.F.R. § 51.319(a)(1)(i), which language BellSouth has sought to incorporate into the parties' Agreement. Rather than adopting language consistent with the applicable rules, Covad seeks to circumvent the rules, by incorrectly claiming BellSouth has an obligation under 47 U.S.C. § 271 to provide line sharing. Even if BellSouth had such an obligation, and if, the appropriate standard for determining the rates for</p>		<p>Georgia NRCs for USOCs ULSDA, ULSDB, ULSD8 and "Line Sharing Splitter – per Splitter Port" should be increased to the NRC for those elements used in both Louisiana and North Carolina rate sheets</p>
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	such an obligation is that the rates must be "just and reasonable" under 47 U.S.C. §§ 201 and 202, only the FCC would have jurisdiction to review such rates			
2 Sub-Loop Concentration and Feeder	<p><b>Covad's Position:</b> Covad agrees with BellSouth's proposed amendment</p> <p><b>BellSouth's Position:</b> The FCC modified the unbundling requirements for sub-loops, limiting incumbent subloop unbundling obligations to distribution loop plant (TRO, ¶ 254). Consequently, the Agreement should not contain additional subloop unbundling requirements</p>	Attachment 2, Section 2.6 Delete subsections 2.6.2.2, 2.6.6, and 2.6.2.4.	Covad agrees with BellSouth's proposed amendment.	
3 Packet Switching	<p><b>Covad's Position:</b> Covad agrees with BellSouth's proposed amendment</p> <p><b>BellSouth's Position:</b> The FCC found that carriers are not impaired without access to packet switching, including routers and DSLAMS (TRO, ¶ 537, 47 C.F.R. § 51.319(a)(2)(i)). The FCC also eliminated the limited exception to packet-switching unbundling (TRO, ¶ 537). Thus, the Agreement should be</p>	<p>Attachment 2, Section 2.1 Add subsection 2.1.2.1.</p> <p>Attachment 2 Delete Section 3.5</p>	Covad agrees with BellSouth's proposed amendment	

	modified to delete the language that included packet switching and should also include language that states loops do not include packet switched features, functions or capabilities			
4 Call Related Databases	<p><b>Covad's Position:</b> Covad does not own any switch as that term is used in the TRO at paragraphs 551-556 or 560. Moreover, under 47 C F R § 51.319(d)(4)(i)(B), so long as switching remains unbundled in the state, these call-related databases must remain available.</p> <p><b>BellSouth's Position:</b> BellSouth is not required to provide Covad with access to its call related databases (TRO, ¶ 551, see <i>also</i> 552-556, 560; 47 C F R § 51.319(d)(4)(i)(B)). The Agreement should be modified to delete call related databases.</p>	Attachment 2 Delete Section 10 1 – 10 6	No change to current IA	
5 Commingling of Services	<p><b>Covad's Position:</b> Covad agrees with BellSouth's proposed amendment with a few clarifying changes.</p> <p>The last three words of subsection 1 9 3 should read "BellSouth's applicable rates" rather than</p>	Attachment 2. Add Section 1 9, including subsections 1 9 1 – 1 9 4	The last three words of subsection 1 9.3 should read "BellSouth's applicable rates" rather than "BellSouth's tariffed rates".	

	<p>“BellSouth’s tariffed rates” This change clarifies that non-tariff rates for non-qualified services or elements may be the applicable rate (e.g. the element is priced at a section 271 just and reasonable rate)</p> <p><b>BellSouth’s Position:</b> The TRO contains specific language concerning the commingling of UNEs and combinations of UNEs with services offered pursuant to tariff. BellSouth has proposed new language at Section 1.9 that tracks the language within the TRO. BellSouth’s proposed language at subsection 1.9.1 reflects the language within the TRO at ¶ 579. BellSouth’s proposed language at subsections 1.9.1 and 1.9.2 reflects language within the TRO at ¶ 579. BellSouth’s proposed language at subsection 1.9.3 reflects language within the TRO at ¶ 580. BellSouth’s proposed language at subsection 1.9.4 is consistent with the payment arrangement contained within the TRO at ¶ 582, n. 1796.</p>		
6 Greenfield Areas	<p><b>Covad’s Position:</b> Covad agrees with BellSouth’s</p>	Attachment 2, Section 2.1 Add subsection 2.1.2	Covad agrees with BellSouth’s proposed

	<p>proposed amendment with the exception of subsection 2 1 2 6, which is specifically addressed under Issue 9, Loop Termination</p> <p>Subsection 2 1 2 6 seeks to add language expressly precluding the "use" of loops to provide "wireless telecommunications services" based on BellSouth's interpretation of the definition of "loops" in 47 C F R § 51 319(a). BellSouth's interpretation is overly broad and not supported by the TRO sections it cites This proceeding is not the forum for reading new provisions into the law. Covad proposes that the subsection 2.1.2 6 language be removed from BellSouth's proposed language.</p> <p>Covad reserves the right to raise BellSouth's obligation to provide access to these loops at just and reasonable rates pursuant to section 271 in the event that the FCC clarifies its position on this issue in a manner consistent with the change in law provision of the parties' interconnection agreement</p>		<p>amendment with the exception of subsection 2 1 2 6, which is specifically addressed under Issue 9, Loop Termination Covad proposes that the subsection 2 1 2 6 language be removed from BellSouth's proposed language</p>
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	<p><b>BellSouth's Position:</b> The TRO provides that "Incumbent LECs do not have to offer unbundled access to newly deployed or 'greenfield' fiber loops" (TRO ¶ 273, also 47 C F R § 51.319(a)(3)(i)), which finding is reflected in BellSouth's proposed language</p>		
7 Fiber to the Home Facilities	<p><b>Covad's Position:</b> Covad agrees with BellSouth's proposed amendments</p> <p>Covad reserves the right to raise BellSouth's obligation to provide access to these loops at just and reasonable rates pursuant to section 271 in the event that the FCC clarifies its position on this issue in a manner consistent with the change in law provision of the parties' interconnection agreement.</p> <p><b>BellSouth's Position:</b> The FCC addressed fiber to the home facilities in the TRO at ¶ 277 and in its related rules at 47 C F R § 51.319(a)(3). BellSouth's proposed language incorporates the FCC's findings and rules</p>	Attachment 2, Section 2.1. Add subsections 2.1.3 and 2.1.4	Covad agrees with BellSouth's proposed amendments
8 Hybrid	<b>Covad's Position:</b>	Attachment 2, Section 2.1. Add	Covad agrees with

Loops	<p>Covad agrees with BellSouth's proposed amendments</p> <p><b>BellSouth's Position:</b> The FCC has set forth narrowly tailored unbundling for hybrid loops that are used to provide broadband services in the TRO at ¶ 289-290 and in its rules at 47 C.F.R. § 51.319(a)(2)(ii). BellSouth's proposed language is consistent with the FCC's directives</p>	subsection 2.1 2 5	BellSouth's proposed amendments.
9 Loop Termination	<p><b>Covad's Position:</b> Subsection 2 1 2 6 seeks to add language expressly precluding the "use" of loops to provide "wireless telecommunications services" based on BellSouth's interpretation of the definition of "loops" in 47 C.F.R. § 51.319(a). BellSouth's interpretation is overly broad and not supported by the TRO sections it cites. This proceeding is not the forum for reading new provisions into the law. Covad proposes that the subsection 2 1 2 6 language be removed</p> <p><b>BellSouth's Position:</b> The rules adopted pursuant to the TRO define the local loop network element as a "transmission facility"</p>	Attachment 2, Section 2 1 Add subsection 2 1 2 6	No amendment should be made.

	<p>between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer's premises " 47 C.F.R. § 51.319(a) Facilities that terminate at a mobile, cellular telephone do not fall within this definition. BellSouth's proposed language recognizes that "loops" by definition cannot be used to provide wireless telecommunications services</p>		
<p>10 Unbundled Copper Loop – Long ("UCL-L")</p>	<p><b>Covad's Position:</b> UCL-L remains a UNE BellSouth's proposed amendment removes the UNE entirely from the Parties' Interconnection Agreement based on the possibility that some loop modifications beyond those normally provided by BellSouth may be necessary to provision a UCL-L to Covad. Covad proposes that the amendment on this point address the modification of the loop rather than removing the loop type altogether</p> <p><b>BellSouth's Position:</b> Within BellSouth's network and pursuant to industry standards all copper loops longer than 18kft have load coils. Without these load coils,</p>	<p>Attachment 2, Section 2 1. Delete subsection 2 1.17 5.</p>	<p>Attachment 2, section 2 1 17 5, strike the phrase "The UCL will be a copper twisted pair loop that is unencumbered by any intervening equipment (e g , filters, load coils, range extenders, digital loop carrier, or repeaters) A long UCL (18 kft or more) will be provisioned with a maximum 2800 ohms resistance "</p> <p>Replace the deleted phrase with: "The UCL will be a copper twisted pair loop that may be encumbered by intervening equipment (e g , filters, load coils, range</p>

	<p>voice and narrowband telecommunications services will not work properly on copper-only loops. The only way an Unbundled Copper Loop - Long (over 18kft) can be provisioned, is to use Line Conditioning to remove those load coils.</p> <p>At ¶ 643 of the TRO, the FCC clarified that Line Conditioning is "properly seen as a routine network modification that incumbent LEC's regularly perform in order to provide xDSL services to their own customers".</p> <p>BellSouth does not remove load coils on copper loops longer than 18kft for its own customers. Therefore, line conditioning relating to UCL-L cannot be classified as a routine network modification. If BellSouth were to offer UCL-L loops in the post-TRO world, it would be providing a superior network to the CLECs. The TRO makes clear that BellSouth is not required to provide such a superior network to the CLECs.</p> <p>In addition, Covad has previously participated in an industry collaborative that adopted line sharing and line conditioning standards within BellSouth. In that collaborative Covad</p>		<p>extenders, digital loop carrier, or repeaters) "</p>
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	<p>agreed that the removal of load coils on copper loops longer than 18kft was not appropriate</p> <p>Consequently, BellSouth's proposed language properly deletes language relating to the UCL-L</p>		
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